

AMENDED IN ASSEMBLY JANUARY 12, 2012

AMENDED IN ASSEMBLY JANUARY 4, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1321

Introduced by Assembly Member Wieckowski

February 18, 2011

An act to amend Section 706.105 of the Code of Civil Procedure, relating to money judgments.

LEGISLATIVE COUNSEL'S DIGEST

AB 1321, as amended, Wieckowski. Money judgments: earnings withholdings.

Under existing law, an employer is required to withhold the amounts provided by an earnings withholding order from all earnings of the employee payable for any pay period that ends during the withholding period. Existing law permits a judgment debtor to claim an exemption from earnings withholding if no prior hearing has been held concerning the earnings withholding order, or if there has been a material change in circumstances since the last hearing concerning the earnings withholding order. A creditor is entitled to a hearing on a judgment debtor's claim of exemption from earnings withholding to satisfy a money judgment if the creditor files a notice of opposition to the claim of exemption.

This bill would require, after a judgment debtor files the claim of exemption and financial statement with the levying officer, the levying officer to serve the judgment debtor's employer with a copy of the original earnings withholding order, a copy of the claim of exemption *unaccompanied by the financial statement*, and a signed instruction

ordering the employer to adjust the amount of earnings withheld to reflect the amount of additional earnings that the judgment debtor asserts are exempt. If the judgment debtor's claim of exemption asserts that all of his or her earnings are exempt, the instruction would order the employer to reduce the amount of earnings withheld to zero. The bill would further require the employer to comply with the provisions of the signed instruction. Under this bill, if the judgment-debtor creditor does not file a timely notice of opposition to the claim of exemption, the levying officer would be required to serve notice upon the employer to continue withholding earnings in compliance with the claim of exemption. This bill would also provide that if, after a hearing, the court denies the judgment debtor's claim in whole or in part, the clerk is required to transmit ~~a certified~~, *or provide by mail, facsimile, e-mail, or other electronic means*, a copy of the court's order to the levying officer, who must promptly serve a notice to the judgment debtor's employer detailing the court's order concerning the earnings withholdings. *Additionally, this bill would provide that these provisions would become operative on July 1, 2013, and would require the Judicial Council to adopt any necessary revisions to notices, claims of exemptions, orders, or other specified documents on or before that date.*

By increasing the duties of local ministerial officers relating to the service of process and notice, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 706.105 of the Code of Civil Procedure
- 2 is amended to read:
- 3 706.105. (a) A judgment debtor may claim an exemption under
- 4 Section 706.051 under either of the following circumstances:

1 (1) No prior hearing has been held with respect to the earnings
2 withholding order.

3 (2) There has been a material change in circumstances since the
4 time of the last prior hearing on the earnings withholding order.

5 (b) A claim of exemption shall be made by filing with the
6 levying officer an original and one copy of (1) the judgment
7 debtor's claim of exemption and (2) the judgment debtor's financial
8 statement.

9 (c) Promptly after the judgment debtor files the claim of
10 exemption and financial statement with the levying officer, the
11 levying officer shall serve on the employer all of the following:

12 (1) A copy of the original earnings withholding order.

13 (2) A copy of the claim of exemption filed by the judgment
14 debtor, *unaccompanied by the financial statement*.

15 (3) An instruction, signed by the levying officer, that the
16 employer must, until further notice, immediately reduce the amount
17 of earnings to be withheld under the original earnings withholding
18 order to reflect the amount of additional earnings claimed to be
19 exempt in the judgment debtor's claim of exemption, and that the
20 amount to be withheld shall be reduced to zero if the judgment
21 debtor's claim of exemption asserts that all of the judgment
22 debtor's earnings are exempt.

23 (d) An employer who is served by the levying officer with the
24 documents identified in subdivision (c) shall, until further notice,
25 immediately reduce the amount of additional earnings claimed to
26 be exempt in the judgment debtor's claim of exemption. If the
27 judgment debtor's claim of exemption asserts that all of the
28 judgment debtor's earnings are exempt, the employer shall, until
29 further notice, immediately cease withholding any earnings
30 whatsoever.

31 (e) Upon filing of the claim of exemption, the levying officer
32 shall promptly send to the judgment creditor, at the address stated
33 in the application for the earnings withholding order, by first-class
34 mail, postage prepaid, all of the following:

35 (1) A copy of the claim of exemption.

36 (2) A copy of the financial statement.

37 (3) A notice of claim of exemption. The notice shall state that
38 the claim of exemption has been filed and that the earnings
39 withholding order will be terminated, or modified to reflect the
40 amount of earnings claimed to be exempt in the claim of

1 exemption, unless a notice of opposition to the claim of exemption
2 is filed with the levying officer by the judgment creditor within
3 10 days after the date of the mailing of the notice of claim of
4 exemption.

5 (f) A judgment creditor who desires to contest a claim of
6 exemption shall, within 10 days after the date of the mailing of
7 the notice of claim of exemption, file with the levying officer a
8 notice of opposition to the claim of exemption.

9 (g) If a notice of opposition to the claim of exemption is filed
10 with the levying officer within the 10-day period, the judgment
11 creditor is entitled to a hearing on the claim of exemption. If the
12 judgment creditor desires a hearing on the claim of exemption, the
13 judgment creditor shall file a notice of motion for an order
14 determining the claim of exemption with the court within 10 days
15 after the date the levying officer mailed the notice of claim of
16 exemption. If the notice of motion is so filed, the hearing on the
17 motion shall be held not later than 30 days from the date the notice
18 of motion was filed unless continued by the court for good cause.
19 At the time prescribed by subdivision (b) of Section 1005, the
20 judgment creditor shall give written notice of the hearing to the
21 levying officer and shall serve a notice of the hearing and a copy
22 of the notice of opposition to the claim of exemption on the
23 judgment debtor and, if the claim of exemption so requested, on
24 the attorney for the judgment debtor. Service is deemed made when
25 the notice of the hearing and a copy of the notice of opposition to
26 the claim of exemption are deposited in the mail, postage prepaid,
27 addressed to the judgment debtor at the address stated in the claim
28 of exemption and, if service on the attorney for the judgment debtor
29 was requested in the claim of exemption, to the attorney at the
30 address stated in the claim of exemption. The judgment creditor
31 shall file proof of the service with the court. After receiving the
32 notice of the hearing and before the date set for the hearing, the
33 levying officer shall file the claim of exemption and the notice of
34 opposition to the claim of exemption with the court.

35 (h) If the levying officer does not receive a notice of opposition
36 to the claim of exemption within the 10-day period after the date
37 of mailing of the notice of claim of exemption and a notice of the
38 hearing not later than 10 days after the filing of the notice of
39 opposition to the claim of exemption, the levying officer shall
40 serve upon the employer a notice that the employer shall continue

1 withholding earnings only to the extent, if any, that the employer
2 has been withholding earnings pursuant to subdivision (d).

3 (i) If, after hearing, the court orders that the earnings withholding
4 order be modified or terminated, the clerk shall promptly transmit
5 a certified copy of the order to the levying officer who shall
6 promptly serve on the employer of the judgment debtor (1) a copy
7 of the modified earnings withholding order or (2) a notice that the
8 earnings withholding order has been terminated. The court may
9 order that the earnings withholding order be terminated as of a
10 date that precedes the date of hearing. If the court determines that
11 any amount withheld pursuant to the earnings withholding order
12 shall be paid to the judgment debtor, the court shall make an order
13 directing the person who holds that amount to pay it promptly to
14 the judgment debtor.

15 (j) If, after hearing, the court denies the judgment debtor's claim
16 of exemption in whole or in part, the clerk shall promptly transmit
17 ~~a certified~~, or provide by mail, facsimile, e-mail, or other electronic
18 means, a copy of the court's order to the levying officer, who shall
19 promptly serve on the employer a notice that the employer shall
20 withhold earnings pursuant to the court's order.

21 (k) If the earnings withholding order is terminated by the court,
22 unless the court otherwise orders or unless there is a material
23 change of circumstances since the time of the last prior hearing
24 on the earnings withholding order, the judgment creditor may not
25 apply for another earnings withholding order directed to the same
26 employer with respect to the same judgment debtor for a period
27 of 100 days following the date of service of the earnings
28 withholding order or 60 days after the date of the termination of
29 the order, whichever is later.

30 (l) If an employer has withheld and paid over amounts pursuant
31 to an earnings withholding order after the date of termination of
32 the order but prior to the receipt of notice of its termination, the
33 judgment debtor may recover those amounts only from the levying
34 officer if the levying officer still holds those amounts or, if those
35 amounts have been paid over to the judgment creditor, from the
36 judgment creditor. If the employer has withheld amounts pursuant
37 to an earnings withholding order after termination of the order but
38 has not paid over those amounts to the levying officer, the employer
39 shall promptly pay those amounts to the judgment debtor.

(m) An appeal lies from any court order under this section denying a claim of exemption or modifying or terminating an earnings withholding order. An appeal by the judgment creditor from an order modifying or terminating the earnings withholding order does not stay the order from which the appeal is taken. Notwithstanding the appeal, until the order modifying or terminating the earnings withholding order is set aside or modified, the order allowing the claim of exemption in whole or in part shall be given the same effect as if the appeal had not been taken.

(n) This section does not apply to a withholding order for support or a withholding order for taxes.

SEC. 2. Section 1 of this act shall become operative on July 1, 2013.

SEC. 3. The Judicial Council shall, on or before July 1, 2013, adopt any necessary revisions to any notices, claims of exemptions, orders, or other documents specified in Section 706.120 of the Code of Civil Procedure in order to implement the provisions of this act.

~~SEC. 2.~~

SEC. 4. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.